

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 -----X  
4 ASKELADDEN LLC, :  
5 Petitioner : Case No:  
6 -vs- : IPR2017-00726  
7 VERIFY SMART CORP., :  
8 Patent Owner : Pages 1 - 152  
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9  
10 PROTECTIVE ORDER MATERIAL

11 Deposition of The Honorable Roderick R. McKelvie

12 Washington, D.C.

13 Thursday, October 26, 2017

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24 Reported by: Kathleen M. Vaglica, RPR, RMR

25 Job No: 216940

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7                      Thursday, October 26, 2017  
8                      (12:04 p.m.)  
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10        Deposition of The Honorable Roderick R. McKelvie,  
11        held at the offices of:

12  
13                  Price Benowitz, LLP  
14                  409 7th Street, N.W.  
15                  Suite 200  
16                  Washington, D.C. 20004  
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19        Pursuant to notice, before Kathleen M. Vaglica, RPR,  
20        RMR, a Notary Public in and for the District of  
21        Columbia.

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1 A P P E A R A N C E S  
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October 26, 2017

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1 Q. And where does Askeladden receive its  
2 funds from?

3 MR. MACEDO: Objection to form.

4 THE WITNESS: I don't know.

5 BY MR. HOFFBERG:

6 Q. Have you ever asked?

7 MR. MACEDO: Objection to form.

8 THE WITNESS: No. I've seen provisions in  
9 the amended agreement that restrict certain members  
10 of Clearing House from making contributions to  
11 Askeladden for particular matters.

12 BY MR. HOFFBERG:

13 Q. That you say for particular matters.

14 A. Right.

15 Q. So what that means is that a, there are  
16 certain persons who are prohibited from selectively  
17 funding particular activities of the Patent  
18 Challenge Committee?

19 A. Right. We want to avoid being in privy  
20 with the member banks of The Clearing House, so the  
21 guidelines and the amended agreement try to insulate  
22 PCC from contact with or funding by members of The  
23 Clearing House.

24 Q. Okay. Who are the members of The Clearing  
25 House?

1 the committee.

2 Q. And how did this patent come to your  
3 attention?

4 A. Jim forwarded it to me.

5 Q. So Jim Howard first suggested to you that  
6 you should look at this patent, which I'll call the  
7 '648 patent?

8 MR. MACEDO: Objection to form.

9 THE WITNESS: I don't know that he first  
10 suggested it to me, but he first forwarded it to me.

11 BY MR. HOFFBERG:

12 Q. Well, who first called your attention to  
13 the existence of this patent?

14 A. Jim Howard.

15 Q. Okay. And did any other member of the  
16 committee have prior knowledge of this patent?

17 A. I don't know.

18 Q. But none of them had indicated to you that  
19 this patent was of interest to them prior to Jim  
20 Howard forwarding it to you?

21 A. Correct.

22 Q. So would it be fair to say that the  
23 interest in this patent came from Jim Howard?

24 MR. MACEDO: Objection to form.

25 THE WITNESS: It might have come from Jim

1 "The Patent Challenge Committee shall have sole  
2 discretion to determine how to apply the foregoing  
3 criteria and shall not be obligated to take into  
4 account any factor in any case."

5 That's the middle of page 19 of 20 with  
6 page number 13 also.

7 MR. MACEDO: Is there a question there?

8 MR. HOFFBERG: No.

9 THE WITNESS: What's the question?

10 BY MR. HOFFBERG:

11 Q. The question was I point your attention to  
12 that paragraph.

13 A. I see it.

14 Q. How, how did you apply your discretion in  
15 this case?

16 MR. MACEDO: To the extent that you are  
17 not disclosing confidences provided by counsel, you  
18 may answer, if you can.

19 THE WITNESS: We exercised our authority  
20 consistent with this paragraph by confirming that  
21 Verify Smart had pending litigation against Wells  
22 Fargo, and we decided to proceed with the  
23 investigation, but to defer decision on whether to  
24 file so that we wouldn't contravene these directions  
25 in these paragraphs.

1 the invention or licenses the invention. I don't  
2 think it refers to race or gender. I think it  
3 refers to status.

4 BY MR. HOFFBERG:

5 Q. Okay. And -- off the record for a minute.

6 (Discussion held off the record.)

7 BY MR. HOFFBERG:

8 Q. I'd like to refer back to page 10 of 20  
9 with footer number 4 of Exhibit 1013, paragraph 11C.

10 A. All right.

11 MR. MACEDO: 11C in the agreement?

12 MR. HOFFBERG: It's 11C in the Amended LLC  
13 Agreement.

14 THE WITNESS: All right.

15 BY MR. HOFFBERG:

16 Q. You indicated that Mr. Jim Howard  
17 presented the '648 patent to you for your  
18 consideration?

19 MR. MACEDO: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. HOFFBERG:

22 Q. Okay. But 11C says -- I'll have to read  
23 the whole thing. I'm sorry. "The Patent Challenge  
24 Committee shall be solely responsible for carrying  
25 out the purpose and shall operate independently of